

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

James A. Hayes, III	)	CASE NO. 3:15 CV 153
	)	
Petitioner,	)	JUDGE PATRICIA A. GAUGHAN
	)	
vs.	)	
	)	
Jason Bunting, Warden	)	<u>Memorandum of Opinion and Order</u>
	)	
Respondent.	)	

**Introduction**

This matter is before the Court upon the Report and Recommendation of Magistrate Judge James Knepp, II (Doc. 10) which recommends denial of the Petition for Writ of Habeas Corpus pending before the Court. Petitioner did not file objections to the recommendation. For the following reasons, the Report and Recommendation is ACCEPTED.

**Standard of Review**

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any

proposed finding or recommendation.” When no objections have been filed this Court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See* Advisory Committee Notes 1983 Addition to Federal Rule of Civil Procedure 72.

### **Discussion**

Petitioner is incarcerated after a Seneca County, Ohio jury found him guilty of two counts of felonious assault. Petitioner sets forth three grounds for habeas relief. Ground One asserts ineffective assistance of trial counsel. Ground Two asserts that the trial court’s imposition of restitution was erroneous. Ground Three asserts that the convictions were against the manifest weight of the evidence.

The Magistrate Judge found Grounds Two and Three to be non-cognizable on habeas review. Ground Two constitutes a noncustodial punishment and Ground Three is an issue of state law. The Magistrate Judge determined that a portion of Ground One was procedurally defaulted and he rejected the remaining portion as failing on the merits.

Having no objections, the Court has reviewed the Report and Recommendation and found no clear error. Accordingly, it accepts the recommendation.

### **Conclusion**

For the reasons set forth herein and for the reasons set forth in the Magistrate Judge’s Report and Recommendation, which is incorporated herein, the Petition for Writ of Habeas Corpus is denied. Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed.R.App.P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan

PATRICIA A. GAUGHAN

United States District Judge

Dated: 8/1/16